IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 796 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABHRAMBHAI BHULJIBHAI VOHARA

Versus

DAHIBEN WIDOW OF DAHYABHAI K. DELETED AS PER COURT'S ORDER

Appearance:

MR AJ PATEL for Petitioner

MR RN SHAH for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 17/06/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of petitioner - original tenant against the respondents - original landlords.

2. The respondent - landlord had sued the petitioner - tenant for a decree of eviction u/s 13 of the Bombay Rent Act on the ground that the tenant was in arrears of rent exceeding six months, and also on the ground that the landlord required the premises reasonably and bonafide for his personal requirement.

3. The trial Court, after appreciating the evidence on record came to the conclusion that the tenant was not in arrears of rent of more than six months, and therefore refused to pass a decree for eviction on this ground. The trial Court however passed a money decree in respect of mesne profits and other incidental dues. The trial Court also found that the plaintiff - landlord had failed to make out a case of reasonable and bonafide requirement and therefore, dismissed the suit for eviction also on this ground.

4. The plaintiff - landlord therefore preferred an appeal against the rejection of his suit for eviction, which appeal was allowed by the lower appellate Court, by which a decree of eviction was passed against the tenant.

5. It is under these circumstances the tenant has preferred the present revision application.

6. This Court is conscious that in revision applications u/s 29[2] of the Rent Act, this Court cannot interfere with findings of fact or with the appreciation of evidence on record. Normally, this Court in revisions under this provision would also not interfere with the findings of fact recorded, unless the findings are based on no evidence at all, or are based upon a gross and perverse misreading of the evidence on record, the acceptance of which would amount to a perversity in law. In view of the facts and circumstances of the case, I am satisfied that this is an eminently just case where such interference is not only necessary but essential, in view of what is discussed hereinafter.

7. It must firstly be noted with emphasis that it is common ground that the landlord had let the premises to the tenant by a rent note exh.60. The rent note specifically contemplates that the letting is for a period of one year, which itself is specified. This specific period of letting is stated to be from Vaishakh Sud 6th of S.Y. 2001 upto Vaishakh Sud 5th of S.Y. 2002. The rent note also stipulates that for this specific letting of one year, the consolidated rent is Rs.32/-.

7.1 It is also common ground that the period stipulated under the rent note expired somewhere in May 1946, and since the tenant did not handover possession on the expiry of the tenure, the tenant became a tenant holding over. The clear implication of this situation in terms of the Bombay Rent Act would be that the tenant became a statutory tenant, that is to say a tenant who would be entitled to the protection of the Rent Act so long as the tenant continues to observe the terms and conditions of tenancy.

7.2 It is also pertinent to note that the landlord had suggested that subsequent to the letting in the year 1945, somewhere in the year 1962, there was an oral understanding between the parties whereby the tenancy was converted to a monthly tenancy, and thereupon, the tenant was required to pay rent by the month. This submission of the landlord was emphatically rejected by the trial Court, firstly because it was a mere oral assertion without any documentary evidence in support thereof, and also because the so called oral agreement was not acted upon by the parties, that is to say the landlord could not lead evidence of even one or two payments made on a monthly basis, which would support his oral assertion. Inspite of the clear cut finding recorded by the trial Court that the landlord's case as regards the conversion of the annual tenancy to a monthly tenancy cannot be believed, the lower appellate Court has completely ignored this finding of fact, and bypassed this finding without the slightest reference to or discussion of the same. This itself is a grave error on part of the lower appellate Court.

8. Reverting back to the terms of the rent note, it is not controvertible that the letting was for the specific one year period, and the rent of the specific period was also quantified at Rs.32/-. In view of this plain fact situation on record, I fail to understand how the lower appellate Court came to the conclusion that this was a case of monthly tenancy. The logic and reasoning adopted by the lower appellate Court in paragraph 11 of its judgement is clearly fallacious, illusory and without any basis whatsoever.

"11. According to this rent note exh.60, the period stipulated under a written contract expired somewhere in May 1946. The purpose for which the premises were let was a residential and there is no dispute about this. On the expiry of the stipulated period, the defendant tenant would

be a tenant holding over. Because the purpose for which the premises were demised was residential, the tenancy on the expiry of the period under the lease would be from month to month. This being so, the rent would be payable by the month."

9. As aforesaid, this conclusion drawn by the lower appellate Court and the findings recorded that the rent was payable by the month, and that therefore, it would be a case of a monthly tenancy, is clearly a finding based on no evidence whatsoever and amounts to a perversity in law.

10. Once it is found that it is not possible to hold that it was a monthly tenancy, obviously section 12[3][a] of the Bombay Rent Act would have no application and the case would be governed by section 12[3][b].

11. When the facts of the case are examined in the light of section 12[3][b], it must be found from the admitted facts on record that the tenant has complied with the requirement of regular deposit in court of the rent due and payable. The relevant facts are recorded in paragraph 21 of the appellate Court's judgement. When these facts and figures are read in the light of the fact that the appeal was decided on 15th March 1983, the dues of the landlord on the date of the decision would be Rs.672/-, as against which the deposit made by the tenant in Court by the said date amounted to Rs.800/-. Thus, it could not possibly be said that the tenant had failed to deposit in Court the amount of rent due and payable during the course of the trial and the appeal. In the premises aforesaid, the tenant would be entitled to protection of section 12[3][b], and consequently no decree for eviction could have been passed against the tenant.

12. In the premises aforesaid on the basis of the facts already established on record, I find that the judgement and decree passed by the lower appellate Court are totally unsustainable and require to be quashed and set aside. The same are accordingly quashed and set aside. This revision is allowed and rule is made absolute with no orders as to costs.

*****

parmar*